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# APPENDIX 4.

1/25/02

## **NPS R.S. 2477 Preliminary Assessment San Juan County - Salt Creek Canyon Claim**

### **Executive Summary**

The National Park Service (NPS) has reviewed appropriate documents and conducted on-site inspections to assess the validity of San Juan County's Revised Statute (R.S.) 2477 right-of-way claim<sup>1</sup> in Salt Creek Canyon, in the Needles District of Canyonlands National Park. This preliminary assessment is based on readily available factual evidence collected by the NPS and information provided by San Juan County. Based on this evidence, NPS concludes that the claimed route does not meet the general standards for an R.S. 2477 right-of-way. NPS recommends that a formal agency determination be completed, preceded by a general public notification seeking any additional evidence on the claim that may not have been obtained to date, and incorporating any such additional information that may be forthcoming.

## **I. Background and Overview of Process**

### **A. Basis for Determination: Action in U.S. District Court**

In 1998 the U.S. District Court for the State of Utah ruled, in a lawsuit by the Southern Utah Wilderness Alliance<sup>2</sup>, that the 1995 Canyonlands Backcountry Management Plan (BMP) violated the NPS Organic Act by failing to close the upper 8.2 miles (above Peekaboo campsite) of the Salt Creek four-wheel-drive route. The jeep route substantially follows the creek bed in the bottom of Salt Creek and had been shown in studies to be adversely impacting the stream and adjacent riparian areas. The court enjoined the NPS from continuing to allow limited use of the area by motorized vehicles. San Juan County did not intervene in the pending litigation.

Intervenors representing four-wheel-drive interests appealed, and on August 15, 2000, the Tenth Circuit Court reversed and remanded the case to the district court for application of different standards of deference, re-examination of the administrative record, and consideration of new NPS

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<sup>1</sup> Recodified as 43 U.S.C. § 932 (1938); repealed by the Federal Land Policy and Management Act of 1976, § 706(a), Pub. L. No. 94-579, 90 Stat 2744, 2793 (1976).

<sup>2</sup> Southern Utah Wilderness Alliance v. Dabney, Case No. 2: 95 CV 559 K (D. Utah, 1998).

policy related to determinations of “impairment of park resources or values,” the central issue in the case.

The NPS subsequently prohibited motorized travel in Salt Creek above Peekaboo, pending further environmental analysis of the effects of motorized vehicles on resources and values in the canyon. Following the Tenth Circuit ruling, San Juan County, which had thus far not chosen to enter the litigation, notified the NPS that it claimed the Salt Creek route as a county road under RS-2477. The county had previously made such claim in comments submitted during the EA process for the BMP (March 1994). Efforts to reach agreement with the county over the closure were unsuccessful.

Mr. David Bernhardt, on behalf of the Department of the Interior, contacted county officials in the winter of 2001 and advised them that the Department would undertake a close examination of the R.S. 2477 issue and ensure a process for considering the County’s claim which would be fair to the interests of all, including San Juan County and the State of Utah.

That examination led the NPS to gather and analyze evidence so that a preliminary assessment of the county's claim could be made. This document summarizes the information gathered to date and the NPS's initial conclusions based upon this information.

## **B. Collection of Evidence**

### **1. Request for Information**

On May 9, 2001, NPS wrote to San Juan County to request any information the county might have relative to the establishment of an RS-2477 right-of-way in Salt Creek Canyon. NPS followed up this letter with an oral request at a meeting with the County Commissioners on June 11, 2001.

### **2. Document Review**

The NPS conducted extensive reviews of various documents and records that might be relevant to whether San Juan County had established an RS-2477 highway in Salt Creek Canyon. These documents and records included historic maps produced by the United States and the State of Utah, aerial photographs, park records and planning documents, publications, and other agencies' records. At the request of NPS, the Bureau of Land Management (BLM) conducted extensive reviews of United States public land records to determine whether the public lands underlying the claimed right-of-way were withdrawn, reserved, or otherwise unavailable for establishment of an R.S. 2477 right-of-way during any periods between 1866 and the establishment of Canyonlands National Park in 1964. The BLM also reviewed official Public Land Survey System (PLSS) records, range improvement project files, and road-related records for relevant information.

### **3. Field Inspections**

NPS conducted field inspections on the claimed right-of-way to look for on-the-ground features

which might indicate road construction or improvement.

#### **4. Interviews and Affidavits**

NPS reviewed affidavits from five people provided by San Juan County, including four on past use and/or possible road construction in Salt Creek Canyon. NPS also interviewed a number of people who had been in Salt Creek Canyon prior to the establishment of Canyonlands National Park in 1964, including two of the four people who submitted affidavits on past use and/or possible road construction. NPS also requested interviews with the other two affiants, but each declined.

### **C. General Standards Applicable to Determinations**

R.S. 2477 provides: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

In order for a right-of-way to be granted under this statute, the following criteria must be met: The claimed right-of-way must have been located on unreserved public lands; it must have been actually constructed; and it must have been a highway. Once an asserted right-of-way is found to meet these three criteria, it is considered valid. The scope of the right-of-way is then determined.

The proponent of an R.S. 2477 right-of-way bears the burden of proof to demonstrate that a highway right-of-way was constructed. It is the proponent's burden to demonstrate this by a preponderance of the evidence. NPS looked to the proponent, San Juan County, to sustain this burden by presenting credible evidence that would lead a reasonable person to conclude that it was more likely than not that the statutory criteria of R.S. 2477 were met. That is, it is the county's burden to show that "construction" of a "highway" over "unreserved public lands" was more likely than not to have occurred. While not required to do so, NPS conducted additional research to locate any other relevant information. Also, the Bureau of Land Management (BLM) is in possession of the most complete information about the reserved status of public lands. At the request of NPS, BLM reviewed the public land records for information related to the historical status of the lands in Salt Creek Canyon and vicinity. All evidence was considered in making this determination.

#### **1. Unreserved Public Land**

Historically, public lands were open or available for right-of-way acquisition, mineral development, homesteading, or other uses. From time to time, Congress or the Executive Branch "withdrew" or "reserved" areas of public land, making them unavailable for some or all of these purposes after the dates of the orders. Under R.S. 2477, a highway right-of-way cannot be perfected on lands that have been withdrawn from entry or reserved for other public purposes. The statute requires that the land be unreserved at some time when construction occurred in order for the highway right-of-way to have been validly granted. In any case, the Federal Land Policy and Management Act (FLPMA) repealed R.S. 2477 on October 21, 1976, and no new highway rights-of-way could have been acquired after that date. BLM examined its public land records to determine if and when the public lands subject to the claimed highway right-of-way were withdrawn, reserved, or otherwise unavailable pursuant to R.S. 2477.

## **2. Construction**

Under R.S. 2477, actual construction of the claimed highway right-of-way must have occurred during a period when the public lands were available (i.e., not withdrawn or reserved). Some form of mechanical construction must have occurred to create or improve the highway. A highway right-of-way cannot be established by haphazard, unintentional, or incomplete actions. For example, the mere passage of vehicles across the land, in the absence of any other evidence, is not sufficient to meet the construction criteria of R.S. 2477 and to establish that a highway right-of-way was granted.

Evidence of actual construction may include such things as road construction or maintenance records, aerial photography depicting characteristics of physical construction, physical evidence of construction, testimony or affidavits affirming that construction occurred, official United States government maps with legends showing types of roads, as well as other kinds of information.

NPS evaluated all information submitted by San Juan County and other evidence compiled by NPS and/or BLM, and conducted on-site inspections to determine if actual construction of the claimed highway right-of-way had occurred prior to the repeal of R.S. 2477 on October 21, 1976, and prior to any reservation of the land including Salt Creek Canyon.

## **3. Highway**

A highway is a thoroughfare used by the public for the passage of vehicles carrying people and goods from place to place. The claimed highway right-of-way must be public in nature and must have served as a highway when the underlying public lands were available for R.S. 2477 purposes. It is unlikely that a route used by a single entity or used only a few times would qualify as a highway. Similarly, a highway connects the public with identifiable destinations or places. The route should lead vehicles somewhere, but it is not required that the route connect cities. For example, a highway can allow public access to a scenic area, a trail head, a business, or other place used by and open to the public. Routes that do not lead to an identifiable destination are unlikely to qualify.

NPS evaluated all evidence submitted by San Juan County and compiled by NPS and/or BLM. Materials reviewed include cadastral survey notes and plats, official BLM public land records, BLM range and grazing files, planning documents, aerial photographs, other federal agency records, state and federal maps, and other information.

## **4. Scope**

Scope is the set of physical attributes of a road that are reasonable and necessary for the type and extent of uses existing when the lands underlying the right-of-way were last reserved from operation of R.S. 2477 or October 21, 1976, if the lands were still subject to operation of R.S. 2477 on that date. These attributes include width and alignment, beginning and end points, and surface

treatment. The burden of establishing scope is on the proponent of the claim, and the proponent must demonstrate this by a preponderance of the evidence. In the absence of evidence otherwise, the scope of an R.S. 2477 right-of-way is assumed to be the physical attributes of the route on the date the underlying lands were removed from operation of R.S. 2477.

## **II. Summary of Comments Received and Records Reviewed**

### **A. Evidence Submitted by San Juan County**

San Juan County provided affidavits from five people, including four regarding past use and/or possible road construction in Salt Creek Canyon. County Planner Ed Sherick orally advised NPS that the county has no other relevant records or information. The county road supervisor orally advised NPS that there were no road maintenance records for Salt Creek. Subsequently, County Commissioner Bill Redd sent a letter referring to the affidavits already provided, and suggesting that the NPS review air photos and USGS topographic maps "produced during the subject time period."

### **B. Evidence Sought and/or Collected by NPS**

#### **1. U.S. Public Land Records**

At the request of the NPS, the BLM conducted extensive reviews of the United States public land records to determine whether the public lands underlying the claimed right-of-way were withdrawn, reserved, or otherwise unavailable for establishment of an R.S. 2477 right-of-way. Records BLM reviewed included Master Title Plats, the Historical Index, the Control Document Index, and the Index to Miscellaneous Documents.

#### **2. Public Land Survey System (PLSS) Records**

NPS also consulted cadastral survey plats and notes for the lands underlying the claimed right-of-way. The cadastral field notes and plats show topographic features along the surveyed section lines, some of which are at the approximate location of the claimed route, e.g., trails, ridge tops, hollows, bottoms of canyons, etc.

#### **3. BLM Range Improvement Project Files and Road Maintenance Records**

BLM reviewed all grazing-related files and road maintenance records relevant to the public lands underlying the claimed route.

#### **4. Maps and Aerial Photography**

NPS reviewed relevant federal and state government maps from 1953 to 1984, as well as aerial photography relevant to the asserted claim taken between 1952 and 1966, to assist in determining whether the claimed route was created or improved by mechanical means and served as a highway. For example, if long continuous sections of a route appear to be straight in an aerial photograph, those sections were possibly mechanically constructed, since large obstacles encountered during construction of the route likely could only be removed mechanically.

## **5. NPS Planning Documents**

NPS reviewed all relevant available land use planning documents. This included a 1962 proposal for a new park, the first park master plan, done in 1965, and a 1973 transportation study.

## **6. Interviews**

NPS interviewed a number of people who had been in Salt Creek prior to the establishment of Canyonlands National Park in 1964, including two of the four people who provided affidavits submitted by San Juan County on past use or possible road construction. NPS also requested interviews with the other two affiants, but each declined.

## **7. County Construction and Maintenance Records**

Construction and maintenance records are the best evidence for determining whether a claimed R.S. 2477 right-of-way was mechanically constructed or improved; however, no such records were provided by San Juan County.

## **8. Other Federal Agency Records**

NPS reviewed records from the Central Federal Lands Highway Division, Bureau of Public Roads, to seek information on projects constructed by the Bureau of Public Roads on behalf of the Atomic Energy Commission.

## **9. Other Publicly Available Information**

NPS reviewed published magazines and journals for information relevant to establishment of the claimed right-of-way. Articles about early exploration of the Needles area and Salt Creek were published in *Arizona Highways* (May 1950), *National Geographic* (May 1962), and the *Canyon Legacy* (journal of the Dan O'Laurie Canyon Country Museum, Fall 1989).

### **III. Analysis of San Juan County Claim**

The following sections evaluate San Juan County's claimed right-of way in Salt Creek Canyon based on the evidence gathered to date.

#### **A. General History of the Area**

By 1200 A.D., Salt Creek was one of a number of southwestern canyons with well-watered alluvial bottomland where Ancestral Puebloan (or Anasazi) people concentrated. After 1300 A.D., these people had left, and occupation and use of the area was sparse and transitory. There was little Euroamerican exploration of the future Canyonlands National Park even through the late nineteenth century.

Ranchers and settlers began moving into San Juan County in the 1880s, but the area remained thinly populated and remote. Population grew in the 1950s with the uranium boom, when prospectors arrived and combed previously unexplored public lands. In 1965, the nearest town to the Needles district, Monticello, had a population of 1,700 people. The next closest towns, Blanding and LaSal, had 1965 populations of 1,675 and 90, respectively. By 1974, the average population of Utah on the whole was 11 people per square mile, while San Juan County had 1.2 people per square mile.

#### **B. Description of Salt Creek**

Canyonlands National Park lies within the vast interior erosional basin formed on the uplifted Colorado Plateau. The carved and eroded basin is characterized by deeply entrenched rivers and intermittent streams that have created a labyrinth of canyons on three distinct levels within the park area. The region as a whole is a rugged, deeply eroded desert. Red sandstone, carved into fantastic shapes and deep canyons, dominates the landscape.

Salt Creek, in the Needles District of the park, is in a remote part of southeastern Utah, approximately 50 miles from the nearest town (Monticello). Salt Creek supports one of the most important riparian ecosystems in the park. It is also the heart of the Salt Creek Archeological District, the area with the highest recorded density of archeological sites in the park. A tributary canyon to Salt Creek contains the spectacular Angel Arch.

Salt Creek begins on the north side of the Abajo Mountains in Manti-LaSal National Forest, about five miles south of the southern boundary of Canyonlands National Park. From the south park boundary the creek runs northerly about 32 miles, where it joins the Colorado River. Sections of the creek have year-round surface water, supported by several springs. In other sections surface flow is intermittent, resulting from spring snowmelt and storm runoff, and the water table drops below the surface for parts of the year. Surface and ground water associated with the creek support the most extensive riparian ecosystem in the park, other than the Green and Colorado Rivers.

Knowledge of the Needles area, including Salt Creek, was limited to nearby ranchers and cowboys until the early 1950s. At that time, a few recreationists and uranium prospectors began to explore the Needles area by horseback, foot, or jeep, including Salt Creek Canyon, where they traveled in and alongside the streambed. After Canyonlands National Park was created in 1964, the park continued to allow motorized, street-legal vehicles to travel in Salt Creek.

The Salt Creek four-wheel-drive route is a single lane unimproved track that runs from a gravel park road in the vicinity of Cave Spring, for approximately 11 miles to a side canyon sometimes known as Angel Arch Canyon, then continues another mile up this side canyon to the terminus in the vicinity of Angel Arch. Above Angel Arch Canyon, the creek continues approximately 12 miles to the south park boundary. The jeep route weaves in and out of the streambed, crossing the channel 60 times in the 9.5 miles between Horse Canyon and the Angel Arch turnoff, and sometimes remains in the streambed for extended lengths. Below Cave Spring, the creek continues for about 9 miles to its confluence with the Colorado River.

Maintenance of the route is limited to occasional grading or filling by the NPS of sections that have become impassable because of flooding or erosion from vehicle travel. Vehicle passage can be challenging, and quicksand along the route periodically traps vehicles. (After recent flooding, two NPS four-wheel-drive vehicles and a backhoe were trapped.) There are no human-made road-related structures (culverts, bridges etc.) along the route. The only other human-made structures in the canyon are the remnants of a fence, associated with cattle grazing prior to the 1970s, an adit (horizontal tunnel) possibly constructed for uranium prospecting, and archeological structures.

## **C. Evidence Related to Public Land Status**

### **1. Relevant Withdrawals and Reservations**

Public Land Order 130 was in effect from May 26, 1943 to January 4, 1945, when it was revoked by Public Land Order 256. Public Land Order 130 temporarily withdrew lands from settlement, location, sale, and entry, and reserved them for prospecting and development under the mineral-leasing laws. This withdrawal affected public lands underlying the length of the Salt Creek jeep route, as well as the remainder of the creek within what is now Canyonlands National Park.

A withdrawal (number U-087819) in support of legislation to establish Canyonlands National Park became effective April 4, 1962. This action withdrew land from all forms of appropriation except leasing under the mineral leasing laws, location and entry of metalliferous minerals under the mining laws, and grazing. This withdrawal affected public lands underlying the length of the Salt Creek jeep route, as well as the remainder of the creek within Canyonlands National Park, except for portions of Sections 20, 28, and 29 underlying the creek in Township 32 South, Range 20 East, which were added to the park in 1971.

Therefore, to qualify as a valid R.S. 2477 right-of-way, San Juan County's Salt Creek claim must have been constructed as a highway before May 26, 1943 or between January 4, 1945 and April 3, 1962. During all other periods, the subject lands were not available for establishing an R.S. 2477

right-of-way.

## **2. Other Information Regarding Land Status**

Public Law 88-590 establishing Canyonlands National Park was signed into law September 12, 1964, and affected the same lands underlying Salt Creek listed above in the 1962 withdrawal. Public Law 92-154 revising the boundaries of Canyonlands National Park was signed into law on December 12, 1971. This act added to the park public land in portions of Sections 20, 28, and 29 underlying Salt Creek in Township 32 South, Range 20 East. This included part of upper Salt Creek, approximately four miles upstream from the terminus of the jeep route.

Part of a section underlying Salt Creek upstream from the jeep route, the west half of the southeast quarter of Section 20, Township 32 South, Range 20 East, was granted to the state of Utah as indemnity for land lost due to the reservation of the LaSal National Forest as of May 25, 1922. This tract was later transferred to private ownership, but BLM has no records for the period after the transfer to state ownership. Canyonlands National Park acquired this tract on December 12, 1976. Because the tract was conveyed to the state of Utah, it was not available for the establishment of an RS 2477 right-of-way after May 25, 1922 since it was not public domain land.

There were no applications or patents for homesteads on the lands underlying Salt Creek within current-day Canyonlands National Park.

There were no patented mining claims on the lands underlying Salt Creek within current-day Canyonlands National Park. Prior to the passage of the Federal Land Policy and Management Act in 1976, records of unpatented mining claims were filed with the counties. San Juan County provided no records of unpatented mining claims along Salt Creek.

## **D. Evidence Related to Construction and Highway**

### **1. Site Inspections**

NPS staff made site inspections during the course of ranger patrols and resource assessments. The inspections found no human-made road structures (pavement, culverts, cattle guards, etc.). There are occasional indications of possible grading on the route, but it is impossible to ascertain whether such grading occurred before 1962, when Salt Creek Canyon was withdrawn. Remnants of an historic fence exist in the canyon, associated with livestock grazing activity that occurred from the late nineteenth century until the 1970s. An adit (horizontal tunnel in a canyon wall), possibly associated with uranium prospecting activity, is also located in the canyon.

### **2. Maps**

Records of construction and/or maintenance and on-site observation are the best methods for determining whether a route was created or improved by mechanical means. Maps are useful in determining whether a route leads to a specific destination or place. The following is a summary of

findings made by NPS after consulting various maps prepared by the USGS, U.S. Forest Service, BLM, Utah State Department of Highways, and San Juan County.

The following table shows the date of the maps reviewed and whether the claimed right-of-way appears in full or in part.

**Maps**

Date	Claimed Route
1956 (based on aerial photography from 1953)	N
1958 (based on aerial photography from 1953)	N
1959	N
1965	N
1965	N
1969	Y ("Jeep Trail")
1970	N
1974	Apparent road is hand-drawn in, after publication of map

Y=Claimed route appears  
N=Claimed route does not appear

**3. Aerial Photography**

NPS reviewed aerial photography taken by the U.S. Geological Survey between 1952 and 1966. The following table summarizes whether the claimed right-of-way appears in photographs taken during this period.

**Aerial Photography**

Date	Claimed Route
1952	NV
1952	NV
1966	V

V=Visible  
NV=Not Visible

**4. Public Land Survey System (PLSS) Records**

The NPS also consulted cadastral survey notes and plats for the lands underlying the claimed right-of-way. Surveyors for the General Land Office and the Bureau of Land Management completed Cadastral Surveys in the area in 1911, 1927 and 1957. The purpose of these surveys was to locate boundary lines of specific townships and/or sections. These boundary lines were in the vicinity of Salt Creek, and in some cases, though not necessarily, crossed the creek. Surveyors made notes of geographic features, including roads or trails, that the survey lines crossed. In cases where surveyors noted other features, but not roads or trails, along survey lines, it may be reasonable to infer that no road or trail existed where the survey line crossed Salt Creek when that survey occurred.

Notes from the 1911 surveys of portions of Townships 32 South, Range 20 East, and Township 33

South, Range 20 East (outside of the south boundary of current-day Canyonlands National Park) identify trails, but no roads, near the upper main and east forks of Salt Creek.

Notes from the 1927 survey of Township 30 South, Range 20 East, make note of "Salt Creek Wash," a trail approximately one-half mile from Salt Creek, and a road in Lost Canyon, as well as other features, but makes no mention of a road or trail in Salt Creek.

In the 1957 survey of portions of Township 30½ South, Range 20 East, the survey lines paralleled but did not cross Salt Creek. However, the notes do mention that "this township is not accessible by motor vehicle."

Notes from the 1957 survey of portions of Township 31 South, Range 20 East, and Township 31 South, Range 19 East, identify nine points where survey lines cross Salt Creek between the Upper Jump and Cave Spring (the area of the jeep route). For eight of these, no road or trail is mentioned. In one of these survey line crossings of Salt Creek (downstream from Peekaboo Spring) the surveyors note a "jeep road."

It is apparent from these notes that the surveyors generally did not record the existence of the claimed right-of-way. In 1957, a "jeep road" was identified at one location where the survey line crossed Salt Creek Canyon, approximately one-half mile northeast of Peekaboo Spring. However, no road or trail was noted at eight other survey line crossings of the canyon, and another survey, which paralleled but did not cross the canyon, called the surveyed township "inaccessible by motor vehicle." The note on the jeep road makes no mention that it was mechanically constructed or improved.

## **5. BLM Public Land Records**

### **a. Grazing and road records**

At the request of NPS, BLM reviewed all available public land records which might indicate whether construction of a road in Salt Creek Canyon had occurred prior to the establishment of Canyonlands National Park. Records examined included Range Improvement Project Files, Project Summaries and Records from 1935 through 1964, the Master File of Projects for BLM District 6 (Monticello), and road inventories. BLM did not find any record of a road or trail in Salt Creek Canyon prior to the establishment of the park. There was some grazing activity in Salt Creek Canyon. Grazing records can indicate if road construction occurred due to the grazing activity. Here, no such evidence is revealed by the grazing files. There is no documented installation of cattle guards, culverts, etc., or other evidence of construction of a road.

### **b. San Juan County assertions of RS2477 in BLM Records**

BLM records include a memorandum dated May 9, 1984, signed by Edward Sherick as authorized officer of the Monticello BLM office, which refers to a "General Highway Map, San Juan County Utah," prepared by the Utah State Department of Highways, 1970, with additional information added by San Juan County (included in map listing above). According to the memo, this map was submitted by San Juan County in May 1984 to identify all roads in the county constructed under the

authority of R.S. 2477 prior to the passage of the Federal Land Policy and Management Act of 1976. The map identifies several roads within Canyonlands National Park, but does not show a road or trail in Salt Creek Canyon.

## 6. San Juan County/NPS Road Maintenance Records

NPS maintenance records do not contain any information relevant to whether the jeep route in Salt Creek Canyon was mechanically constructed or improved prior to the establishment of the park, nor whether it served as a highway during the time in which the lands were available for establishing a right-of-way under R.S. 2477.

The NPS asked San Juan County for any maintenance records it may have regarding the subject area; however, the county replied that they had none.

In the 1960s and 1970s, there was a Memorandum of Agreement between the NPS, San Juan County, and Utah Department of Transportation for maintenance of the external approach road to the Needles district (not the Salt Creek jeep route). This is the only agreement between the San Juan County and the NPS for road maintenance.

NPS records do indicate that the Salt Creek jeep route was occasionally maintained by the NPS *after* the establishment of the park, and that San Juan County did not contribute to the maintenance of the route. In a few instances, NPS used front-end loaders or other heavy equipment to grade or fill sections that had become impassable.

## 7. NPS Planning Documents

NPS reviewed all relevant available land use planning documents. This included a 1962 proposal for a new Canyonlands National Park, the first park master plan, done in 1965, and a 1973 transportation study. The following table shows the dates of the documents reviewed and whether the claimed right-of-way appears.

**NPS Planning Documents**

Date	Claimed Route
1962	Y ("Proposed Jeep Route")
1965	Y ("Existing Jeep Route")
1973	N

Y=Claimed route appears

N=Claimed route does not appear

## 8. Other Federal Agencies' Records

NPS reviewed records from the Central Federal Lands Highway Division, Bureau of Public Roads, to seek information on projects constructed by the Bureau of Public Roads on behalf of the Atomic Energy Commission. No roads or projects constructed by the Bureau of Public Roads are located within Salt Creek Canyon.

## 9. Oral Evidence

NPS interviewed a number of people who had been in Salt Creek prior to the establishment of Canyonlands National Park in 1964, including two of the four people who provided affidavits submitted by San Juan County on past use or possible road construction, Kent Frost and Rigby Wright. NPS also requested interviews with the other two affiants, Max Black and Kedric Somerville, but each declined. Both stated that they supported the county's efforts; Mr. Somerville stated that he didn't want to "do anything that detracts from what the county is trying to do."

- Interviewee/affiant Kent Frost claimed in his interview to have actually seen a bulldozer in Salt Creek, in the late 1950s. He first visited Salt Creek in 1952, and stated in his interview that he thought no bulldozing had been done at that time. He stated in his affidavit that "uranium mining constructed part of the road in the 1950's."
- Interviewee John Scorup thought he had seen evidence of bulldozing (blade marks), but thought it had been done prior to his first visit in 1956, and that there had been no further bulldozing after this.
- Interviewee/affiant Rigby Wright stated in his affidavit that "when I first used and observed the road in 1958, the road had clear indications beyond Peekaboo Springs going up toward Angel Arch of a grader improving the road. There were berms and edges that clearly showed bulldozer maintenance of the road." In his interview, he pointed out that there was an error in his affidavit immediately following the previous sentences. The phrase "the road goes eight or nine miles to Angel Arch Canyon where an old cowboy camp is located" is incorrect; the old cowboy camp is actually located about 3.5 miles above Peekaboo Spring. Mr. Wright also clarified in the interview that he had gotten stuck in quicksand at this point (the old cowboy camp) on his first trip and had turned back rather than continuing the remaining 6.5 miles to Angel Arch, and that he had not traveled the entire distance to Angel Arch until immediately before the park was established. He did not know who might have done the bulldozing.
- Affiant Kedric Somerville stated in his affidavit that a road in Salt Creek had been constructed and maintained by bulldozer or "equipment," all the way up to the "jump area," "evidenced by signs of excavation that were old" when he first went on it in 1960. His affidavit also stated that "construction was also performed by the passing of motorized vehicles over the roadway."
- Affiant Max Black made no mention of road construction in his affidavit.
- Interviewee Lloyd Holyoak had not witnessed bulldozing or signs of it on his visits to Salt Creek from 1949 through 1951 and in the late 1950s.
- Interviewee Alan Wilson had not witnessed bulldozing or signs of any construction activities on his visits to Salt Creek from 1950 through 1959.
- Interviewee Sam Taylor had not witnessed bulldozing or signs of any construction activities on his visits to Salt Creek in 1951 and between 1956 and 1964.
- Interviewee Jimmie Walker had not witnessed bulldozing or signs of any construction activities on his visits to Salt Creek in the early to mid 1950s.
- Interviewee Lloyd Pierson had not witnessed bulldozing or signs of any construction activities on his visits to Salt Creek from 1957 to 1961.
- Interviewee Mitch Williams had not witnessed bulldozing or signs of any construction activities on his visits to Salt Creek from 1960 through the establishment of the park in 1964.

## **10. Other Publicly Available Information**

A few published articles in magazines and journals describe exploration of the Needles area and Salt Creek Canyon in the 1950s. These articles describe Salt Creek Canyon as remote and difficult to access. They discuss driving jeeps through the sandy creekbed, including instances of jeeps getting stuck in quicksand, as well as travel by foot, horse, and technical rock climbing. They make no mention of road construction in Salt Creek Canyon.

## **E. Conclusion**

### **1. Land Status**

The public land underlying San Juan County's claimed right-of-way in Salt Creek Canyon was reserved from May 26, 1943 to January 4, 1945, then from April 4, 1962 until present. Therefore, it was available for establishment of a right-of-way under R.S. 2477 prior to May 26, 1943 and between January 4, 1945 and April 4, 1962.

### **2. Construction**

San Juan County provided several affidavits, but did not provide any documentation, relative to whether its claimed right-of-way was mechanically created or improved. NPS collected and reviewed all available information in an effort to determine whether the route was created or improved in such a manner as to satisfy the requirements of R.S. 2477.

The PLSS records indicate that no road was observed in the subject area any time before 1957 when the last cadastral survey was completed prior to transfer of the land to the NPS. Records from the 1957 surveys are equivocal as to the extent or nature of the road. The PLSS records do not indicate whether the jeep route was mechanically constructed or improved.

Maps prepared by USGS and the State of Utah do not indicate the existence of a trail or road prior to 1969, when a "jeep trail" along Salt Creek appeared on the revision of the USGS 15 minute topographic map for the area.

NPS planning documents identify a "proposed jeep route" in 1962, prior to the establishment of the park, and an "existing jeep route" in 1965, after the establishment of the park.

Aerial photography from 1952 and 1953 does not indicate the existence of a trail or road. A road is visible on aerial photographs taken in 1966.

BLM public land records do not offer any information regarding any road construction in Salt Creek Canyon.

San Juan County provided affidavits from three early travellers in Salt Creek which suggested that

the route may have been constructed or improved by mechanical means. However, several other early travellers stated in interviews that the route had not been mechanically improved or constructed prior to the establishment of Canyonlands National Park. There is no evidence that the State of Utah or San Juan County ever mechanically constructed or improved the jeep route.

Based on this information NPS finds that construction of the route has not been established by a preponderance of the evidence at a time when the lands were open for establishment of a right-of-way under R.S. 2477. There is insufficient reliable evidence to demonstrate that San Juan County or any other party used mechanical means to construct or improve a highway in Salt Creek Canyon prior to the reservation of the area in 1962.

### **3. Highway**

San Juan County provided several affidavits, but did not provide any documentation, relative to whether the asserted right-of-way served as a highway when the underlying lands were available for the creation of an R.S. 2477 right-of-way. NPS collected and reviewed all available information in an effort to determine whether the claimed route met the “highway” standard.

Due to the remoteness of the area and distance from nearby towns such as Monticello (50 miles) and Moab (75 miles), use of the Needles area, including Salt Creek Canyon, was limited.

No maps or other documents indicate that the route was recognized as a public highway or thoroughfare during the period that the area was available for establishment of an R.S. 2477 right-of-way.

The county provided affidavits from four early Salt Creek travellers that described use of the route during the 1950s and 1960s. Interviewees also described use during this period. No affiants, interviewees, or written or printed evidence indicate that the route was established by a local, state or federal government during the period when the lands were open for establishment of a claim under R.S. 2477.

One destination on the route was Angel Arch, a prominent feature in Canyonlands National Park. Alan Wilson, an early Needles-area explorer, states (in an interview with NPS and an article published in the *Canyon Legacy* journal) that there was not much knowledge of Angel Arch until 1952 or 1953, when it was "discovered." Interviews and other articles indicate that exploration was done in Salt Creek Canyon throughout the 1950s, with trips generally heading toward Angel Arch, but not always reaching it due to the rugged nature and distance of the trip.

Based on this information, it appears that the public highway criterion for establishing an R.S. 2477 right-of-way has not been met by a preponderance of the evidence. There is insufficient reliable evidence to demonstrate that San Juan County or any other party laid out, constructed, or otherwise declared a public highway in Salt Creek prior to the reservation of the area in 1962.

### **4. Scope**

The scope of the claimed right-of-way is the width, alignment, surface treatment, and other highway features that existed when the public lands subject to the claim were reserved. Scope of the claimed route will not be considered until such time as a claim can be established.

#### **IV. Preliminary Assessment**

NPS has collected and reviewed available evidence with respect to San Juan County's R.S. 2477 claim in Salt Creek Canyon. Based on this information, it appears that an R.S. 2477 right-of-way was not established in Salt Creek Canyon. Existing known evidence does not show by a preponderance of the evidence that the route meets the standard for an R.S. 2477 right-of-way. A formal public notification should be carried out and a determination made based upon notice and the opportunity for the public to provide any additional information that may exist regarding the establishment of an R.S. 2477 right-of-way in Salt Creek Canyon.